

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DANIEL HORACEK, #218347,

Plaintiff,

v.

DAVID J. BURNETT,

Defendant.

Case No. 07-11885

DISTRICT JUDGE
ARTHUR J. TARNOW

MAGISTRATE JUDGE
R. STEVEN WHALEN

**ORDER ADOPTING IN PART THE REPORT AND RECOMMENDATION [57],
AND
GRANTING IN PART AND DENYING IN PART
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [20]**

Before the Court is the Magistrate Judge's Report and Recommendation [57] filed August 19, 2008, on Defendant's Motion for Summary Judgment [20]. The Report and Recommendation recommended that Defendant's Motion be granted in part and denied in part. On August 28, 2008, Defendant timely filed an Objection [59] to the R&R, contesting the Magistrate's finding that an individual defendant named in his or her personal capacity is subject to suit under the Religious Land Use and Institutionalized Persons Act (RLUIPA). Plaintiff filed neither an Objection nor a Response to Defendant's Objection.

The Court has reviewed the Report and Recommendation, Defendant's Objection, and the relevant pleadings, and ACCEPTS the Report and Recommendation with the exception of its finding on the availability of personal-capacity damages. Therefore, being fully advised in the premises,

IT IS HEREBY ORDERED that Defendant's Motion for Summary Judgment is GRANTED IN PART AND DENIED IN PART, as follows:

Summary Judgment is GRANTED to the extent that the §1983 claims naming Defendant in his official capacity are DISMISSED on the basis of Eleventh Amendment immunity.

Summary Judgment is also GRANTED as to the RLUIPA claims that name Defendant in his personal capacity.

In all other aspects, Defendant's Motion for Summary Judgment is DENIED.

SO ORDERED.

S/Arthur J. Tarnow
Arthur J. Tarnow
United States District Judge

Dated: September 30, 2008

I hereby certify that a copy of the foregoing document was served upon parties/counsel of record on September 30, 2008, by electronic and/or ordinary mail.

S/Catherine A. Pickles
Judicial Secretary